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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re R.G. et al., Persons Coming Under the  
Juvenile Court Law.

KERN COUNTY DEPARTMENT OF HUMAN  
SERVICES,

Plaintiff and Respondent,

v.

T.S.,

Defendant and Appellant.

F078507

(Super. Ct. Nos. JD136941-00,  
JD136942-00, JD136943-00,  
JD136944-00)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Kern County. Raymonda B. Marquez, Judge.

Beth A. Sears, under appointment by the Court of Appeal, for Defendant and Appellant.

Margo A. Raison, County Counsel, and Jennifer E. Feige, Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Peña, Acting P.J., Smith, J. and Snauffer, J.

Appellant T.S. (mother) appealed from a judgment terminating her parental rights as to her now 10- and three-year-old daughters Rebecca G. and Ava G. and eight- and four-year-old sons Charles G. and Laurence G. (Welf. & Inst. Code, § 366.26.)<sup>1</sup> Mother filed an opening brief contending the juvenile court failed to comply with the inquiry and notice requirements of the Indian Child Welfare Act (ICWA). (25 U.S.C. § 1901 et seq.) Respondent concedes the error. After reviewing the record, we conclude the juvenile court failed to adequately comply with the ICWA and conditionally reverse.

### **PROCEDURAL AND FACTUAL SUMMARY**

The Kern County Department of Human Services (department) took the children, then ranging in age from eight months to eight years, into protective custody in January 2017 after mother left three of the four children alone and then eight-year-old Rebecca started a fire while trying to cook a meal. Law enforcement was called in after the firefighters found a cockroach infestation and trash and debris scattered throughout the family's apartment. Mother was arrested for leaving her children alone in such filthy living conditions.

The department filed juvenile dependency petitions on the children's behalf under section 300, subdivision (b), alleging mother's failure to adequately supervise them placed them at a substantial risk of serious physical harm. At the detention hearing on the petitions, mother identified Frederick G. as the father of the three oldest children. She only knew the first name of Ava's father (Charles) but had no way of contacting him.<sup>2</sup> She completed the "Parental Notification of Indian Status" (ICWA-020), claiming possible Cherokee and Iroquois Indian heritage.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code, unless otherwise noted.

<sup>2</sup> The department was unable to identify Ava's father, "Charles." Frederick remained an alleged father and the department was unable to locate him. At some point prior to termination of parental rights, the department discovered that he was deceased.

The department sent the “Notice of Child Custody Proceeding for Indian Child” (ICWA-030) to the regional office for the Bureau of Indian Affairs, the Secretary of the Interior, and the following tribes: Onondaga Nation, Cayuga Nation of New York, Oneida Indian Nation, St. Regis Mohawk Tribe, Tonawanda Band of Seneca, Tuscarora Nation of New York, Seneca Nation of Indians, Eastern Band of Cherokee Indians, Cherokee Nation and United Keetoowah Band of Cherokee Indians in Oklahoma.

At the jurisdictional hearing in May 2017, the juvenile court found the ICWA did not apply to the three oldest children but reserved the issue as to Ava pending mother’s DNA results.<sup>3</sup> The court found the children fell within its dependency jurisdiction as alleged in the petition and set the matter for disposition. At the initial dispositional hearing in July, the court found the ICWA did not apply to Ava and continued the hearing to September 2017. At that hearing, the court removed the children from mother’s custody and provided reunification services to her only. In December 2017, the children were placed with their maternal grandparents.

In June 2018, at a continued six-month review hearing, the juvenile court terminated mother’s reunification services and set a section 366.26 hearing for October 10, 2018. In its report for the hearing, the department recommended the juvenile court terminate parental rights and free the children for adoption by their maternal grandparents. Though mother regularly visited the children and they had a relationship with her, they no longer looked to her as a parental figure and the two older children expressed their desire to be adopted by their grandparents. The grandparents were willing to consider postadoption contact for mother.

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<sup>3</sup> Mother was required to undergo DNA testing because Ava did not have a birth certificate.

Mother appeared with counsel at the section 366.26 hearing and objected to the recommendation to terminate parental rights but did not present any evidence. She asked the court to order legal guardianship for the children with the maternal grandparents.

The juvenile court found the children were likely to be adopted and none of the exceptions to adoption applied and terminated parental rights.

### **DISCUSSION**

In her sole issue on appeal, mother contends the department failed to comply with the inquiry and notice requirements of the ICWA because it served notice of the dependency proceedings only on seven of the nine federally recognized Iroquois tribes. She asks this court to order a conditional reversal of the order terminating her parental rights and to remand the matter to the juvenile court with instructions that it direct the department to provide notice to the two additional Iroquois tribes. Respondent concedes the error.

Congress enacted the ICWA “to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children in ‘foster or adoptive homes which will reflect the unique values of Indian culture.’ ” (*In re C.Y.* (2012) 208 Cal.App.4th 34, 39.) An “ ‘Indian child’ is defined as a child who is either (1) ‘a member of an Indian tribe’ or (2) ‘eligible for membership in an Indian tribe and ... the biological child of a member of an Indian tribe ....’ (25 U.S.C. § 1903(4).) The ICWA applies only to federally recognized tribes. (25 U.S.C. § 1903(8).)” (*In re Jonathon S.* (2005) 129 Cal.App.4th 334, 338.) A list of all federally recognized tribes is published in the Federal Register and is updated annually. (25 U.S.C. § 5131.)

Section 224.3, subdivision (a)(3)(A)(ii) requires that notice be sent to all tribes of which the child may be a member or eligible for membership, until the court makes a determination as to which tribe is the child’s tribe. Courts have construed this language

to require “notice to *all* federally recognized tribes within the general umbrella identified by the child’s parents or relatives.” (*In re O.C.* (2016) 5 Cal.App.5th 1173, 1183; *In re Alice M.* (2008) 161 Cal.App.4th 1189, 1202.)

Appellant’s contention is the Iroquois nations comprise nine federally recognized tribes of which the department only notified seven. Appellant asserts “The Iroquois are a confederacy of separate nations, none of which bear the name ‘Iroquois.’ The confederacy consists of the following six nations: (1) Mohawk[,] (2) Onondaga[,] (3) Oneida, (4) Cayuga[,] (5) Seneca, and (6) Tuscarora. The federally recognized tribes bearing the names of these six nations are as follows: (1) Cayuga Nation[,] (2) Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin)[,] (3) Oneida Nation of New York[,] (4) Onondaga Nation[,] (5) Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)[,] (6) Seneca Nation of Indians (previously listed as the Seneca Nation of New York)[,] (7) Seneca-Cayuga Nation (previously listed as the Seneca-Cayuga Tribe of Oklahoma)[,] (8) Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York and[,]) (9) Tuscarora Nation. (82 Fed.Reg. 4916–4919.)” (Fn. omitted.)

In order to fully comply with the ICWA, appellant contends, the department was required to notify the Oneida Nation and the Seneca-Cayuga Nation. We concur.

### **DISPOSITION**

The order terminating parental rights is conditionally reversed. The matter is remanded for the limited purpose of complying with the notice requirement of the Indian Child Welfare Act (ICWA). If upon sufficient compliance with the notice requirements of the ICWA the court again finds that the ICWA does not apply, the court may reinstate its prior order terminating parental rights. The Clerk/Executive Officer of this court is directed to issue a remittitur immediately. (Cal. Rules of Court, rule 8.272(c)(1).)